IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO. 666 OF 2004

IN

SUMMARY SUIT NO. 2382 OF 2003

Anita Mehra .....**Plffs.**
vs.
Chitra Creations .....**Defnds.**

B.S. Chandnani for the plffs.

D.A. Barot for the defnds.

Nitin Parekh for the defnds.

CORAM: S.U. KAMDAR, J.

DATE : 20th September, 2005.

P.C. :.

1. The present suit is filed on dishonoured cheque of Rs.50,000/- and with interest thereon.

2. The two defences which are raised by the

defendant firstly is that the suit is barred by the law of limitation because three years to be computed from the date of the cheque and the date of the cheque is 20.20.99 and the suit is lodged on 16.4.2003. However it is an admitted position that the cheque was deposited and the same is dishonoured on 19.4.2000 and from that date the suit is within time.

3. Learned counsel for the defendant has relied upon the judgment of the Allahabad High Court in the case of S. Dharam Singh vs. Khan chand reported in AIR 1966 Allahabad 137 in support of the contention that the period of limitation to be counted from the date of the cheque and not from the date of dishonoured cheque. The aforesaid contention raised by the learned counsel is without any merits. The matter before the Allahabad High court for consideration was whether the issue of cheque would amount to acknowledgement of liability giving the fresh period of limitation of three years and if that is so then the date of cheque would give a period of limitation ad date if

acknowledgement of liability. The cheque having been dishonoured there is no part payment and therefore the court has held that the acknowledgment of liability would be counted from the date of the cheque and therefore period of limitation will start from the date of the cheque. That judgment has no relevance in the present case because the suit in the present case is filed on dishonoured cheque and in such cases cause of action arises only from the date of the cheque is dishonoured and not from the date of the cheque. In that view of the matter the aforesaid defence of the defendant has no merits. The second contention raised is that the defendants have paid to a broker the amount covered by the said cheque and therefore there is no amount due and payable by the defendant to the plaintiff. The defence is merely required to be stated to be rejected because there is no evidence of any nature whatsoever except the bare words that the amount is paid. The plaintiff has tendered an original compilation of documents which is taken on record and marked Ex.P.1 colly. In that view of the matter, there shall be decree in

favour of the plaintiffs and against the defendants for sum of Rs.79,250/- with further interest at the rate of 18% p.a. till the date of payment and or realisation. Suit decreed. Summons for Judgment is also disposed off accordingly.

sd/-

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